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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,017	10/24/2003	Dale K. Hitt	DSI-P103	1755

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PATENT LAW GROUP LLP
2635 NORTH FIRST STREET
SUITE 223
SAN JOSE, CA 95134

EXAMINER

FAYYAZ, NASHMIYA SAQIB

ART UNIT	PAPER NUMBER
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2856

DATE MAILED: 04/13/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/693,017

Applicant(s)

HITT ET AL.

Examiner

Nashmiya S. Fayyaz

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 15-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 10/24/03.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: ____.

DETAILED ACTION

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-14, drawn to a probe with a body and mast, classified in class 73, subclass 73.
 - II. Claims 15 and 17-22, drawn to a probe with a housing and a collar, classified in class 73, subclass 73.
 - III. Claim 16, drawn to a probe with a housing and gasket, classified in class 73, subclass 73.
2. The inventions are distinct, each from the other because:
3. Inventions I and II/III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and (2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all the limitations of II/III are not found in invention I. The subcombination has separate utility such as a one piece probe for soil sampling.
4. Inventions II and III are related as combination and subcombination. Inventions in this relationship are distinct if it can be shown that (1) the combination as claimed does not require the particulars of the subcombination as claimed for patentability, and

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(2) that the subcombination has utility by itself or in other combinations (MPEP § 806.05(c)). In the instant case, the combination as claimed does not require the particulars of the subcombination as claimed because all the limitations of III are not found in II. The subcombination has separate utility such as a soil sampler for sampling gasses.

5. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II or III, restriction for examination purposes as indicated is proper.

6. During a telephone conversation with Carmen Cook on 3/19/04 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-14. Affirmation of this election must be made by applicant in replying to this Office action. Claims 15-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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8. Claims 1, 6-10 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Iggulden et al-US Patent #4,852,802.

As to claims 1, 6-10 and 13-14, Iggulden et al. disclose a wireless sensor probe24' including a probe body 42 with voids to house sensor mast 40 and a probe top part 54 which also includes a solar panel, see Fig. 7 and col. 6, lines 15 et seq. As to claims 6-9, note the shape of the battery 52, and logic 38 encasing which appears as a collar with an antenna for transmitting 48 and receiving, see also fig 6, 9 and 10.

9. Claims 1, 5 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Reed et al- US Patent # 5,635,710.

As to claims 1, 5 and 13-14, Reed et al disclose a penetrometer radiation sensor including body 20, sensor mast 30/40 and a "top part" unnumbered above electronics 70, see Fig. 1-2. As to claim 5, note seal 50 on outer perimeter of mast 40 which aids in sealing with body 20.

10. Claims 1, 6, 11 and 13-14 are rejected under 35 U.S.C. 102(b) as being anticipated by Twersky et al. US Patent # 4,445,788.

a. As to claims 1, 6, 11 and 13-14, Twersky et al. disclose a soil probe including body 17, sensor mast 18, and top part 19, viewing face display 42 via camera 46, see Figs. 1-2.

Claim Rejections - 35 USC § 103

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The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Iggluden et al in view of Hulme-GB2,320,572.

As to claims 11-12, Iggluden et al fail to teach a display, per se or an LCD display. In a related prior art device, Hulme discloses a moisture detector in which there is a body 1 with probe sensors 6/7 and further includes an LCD display 3, see Fig. 1. Therefore, inclusion of such an LCD display would have been obvious to one of ordinary skill in the art at the time of the invention for the purpose of having an in situ display of the moisture content sensed by the sensors.

Claim Rejections - 35 USC § 112

12. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

13. Claims 1-14 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which


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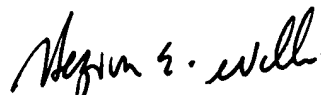
was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. It is unclear how the top part and mast relate. In the drawings in Fig. 7, probe body 750 appears to be incorrect and where is the sensor node?

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nashmiya S. Fayyaz whose telephone number is 571-272-2192. The examiner can normally be reached on Mondays and Thursdays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Hezron E. Williams can be reached on 571-272-2208. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


nf
3/22/04


HEZRON WILLIAMS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2800

NFayyaz
Examiner
Art Unit 2856